NOTIFICATION

(Law Department)

No. LAW 69 LCA 65, Bangalore, dated 22nd September 1965

Order that the Government (Liability in Tort) Bill, 1965 (Central Bill No. 54 of 1965), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 31st August 1965, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

B. Ramachandra Rao,
Under Secretary to Government, I/c.,
Law Department.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 31st August, 1965 :—

Bill No. 54 of 1965.

bill to define and amend the law with respect to the liability of the Government in tort and to provide for certain matters connected therewith.

Be it enacted by Parliament in the Sixteenth Year of the Republic of India as follows :—

1. Short title extent and commencement.—(1) This Act may be called the Government (Liability in Tort) Act, 1965.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "agent", in relation to the Government, means a person (other than an employee of the Government) who being employed to do any act for the Government is, in doing the act, under the order or control of the Government ;

(*b*) "employee of the Government" means any person who—

(i) is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union ; or

(ii) is a member of a civil service of a State or holds any civil post under a State ;

(*c*) "Government" in relation to any liability imposed under this Act, means—

(i) where a tort is committed by an employee of the Government while acting in connection with the affairs of the Union, or by an agent or independent contractor employed by the Central Government, the Central Government;

(ii) where a tort is committed by an employee of the Government while acting in connection with the affairs of a State, or by an agent or independent contractor employed by a State Government, the State Government ;

(*d*) "independent contractor", in relation to the Government, means a person who contracts to do an act for the Government, but who in doing the act is not under the order or control of the Government.

3. Liability of Government in tort.—*Subject to the provisions of this Act, the Government shall be liable in respect of any tort—*

(a) *committed by an employee of the Government or an agent employed by the Government,—*

(i) *while acting in the course of his employment ; or*

(ii) *while acting beyond the course of his employment if the act constituting the tort was done by the employee or agent on behalf of the Government and is ratified by the Government ;*

(b) *committed by an independent contractor employed by the Government or any of his servants or workmen in doing the act contracted to be done for the Government in any of the following cases (and in no others), namely :—*

(i) *where the Government assumes control of the act contracted to be done by the independent contractor ;*

(ii) *where the Government has authorised or ratified the act of the independent contractor alleged to constitute the tort ;*

(iii) *where the act contracted to be done although lawful is of such a nature that unless reasonable care is taken, it is likely in the ordinary course of events to cause personal injury or damage to property in the doing thereof and such care has not been taken .*

Provided that the Government shall not be liable under this sub-clause if there is an express stipulation in the contract between the Government and the independent contractor that—

(a) *reasonable care in the doing of the act shall be taken by the independent contractor and not by the Government, and*

(b) *the independent contractor shall, and the Government shall not, be liable for any personal injury or any damage to property caused in the doing of the act by the failure on the part of the independent contractor to take such care ;*

(iv) *where the Government is under a legal obligation to do the act itself ;*

(v) *where any law for the time being in force imposes upon the Government an absolute duty to ensure the safety of persons or property in the doing of the act contracted to be done and there has been a failure to comply with that duty.*

4. Liability of Government in tort as owner or occupier of immovable property.—*Where the Government is the owner of any immovable property, or is in possession or occupation of, or exercises control over, any immovable property, the Government shall be liable in respect of any breach of duty attaching by law to the ownership, possession, occupation or control of such property in the same manner and to the same extent as a private person of full age and capacity:*

Provided that where any such property vests in the Government by virtue of any rule of law which operates independently of the acts or intentions of the Government, the Government shall not, by virtue of this section, be subject any liability in tort by reason only of the property being so vested, but the provisions of this section shall be without prejudice to the liability of the Government thereunder in respect of any period after the Government or any person acting for the Government has, in fact, taken possession or control of any such property, or entered into occupation thereof.

5. Liability of Government in tort in respect of escape of dangerous things.—*The Government shall be liable in respect of any personal injury or any damage to property caused by any dangerous thing in the possession of the Government or over which the Government exercises control in the same manner and to the same extent as a private person of full age and capacity would be liable in similar circumstances if he were in possession of, or exercised control over, such thing.*

6. Liability of Government in respect of breach of duties to its employees.—*The Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of any breach of those duties which a person owes to his servants or agents under any law for the time being in force by reason of being their employer :*

Provided that in awarding compensation to any employee of the Government or any agent employed by the Government in respect of any personal injury or any damage to property caused by the breach of any such duties, the court shall take into account the amount, if any, paid or required to be paid by the Government, whether by way of disablement benefit, compensation or otherwise, to such employee or agent under any other law for the time being in force.

7. Statutory limits as to the amount of liability to apply to claims against Government also.—Any enactment which negatives or limits the amount of liability of an employee of the Government or an agent employed by the Government in respect of any tort committed by such employee or agent shall, in the case of any proceedings against the Government under this Act in respect of such tort, apply in relation to the Government as it would have applied to such employee or agent if the proceedings against the Government had been proceedings against that employee or agent.

8. Defences open to Government.—In any proceedings against the Government under this Act, the Government shall be entitled to raise by way of defence the same pleas which a private person would be entitled under law to raise if a similar suit had been instituted against such person.

9. Indemnity and contribution.—Where the Government is subject to any liability in tort by virtue of this Act, any law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the

liability to which it is so subject as if the Government were a private person of full age and capacity.

10. Special provisions relating to armed forces of the Union and police forces.—(1) Any act done by a member of the armed forces of the Union while on duty as such or by a member of a police force while on duty as such shall not subject either him or the Government to liability in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Union or, as the case may be, a member of the police force if—

(*a*) at the time the thing is suffered by that other person he either is on duty as a member of the armed forces of the Union or as a member of the police force or, though not on duty, is on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Union or, as the case may be, for the purposes of the police force ; and

(*b*) the Government certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to any award under any law or scheme relating to the death or disablement of members of the force of which he is a member :

Provided that this sub-section shall not exempt a member of the armed forces of the Union or a member of a police force from liability in tort in any case in which the court is satisfied that the act was not connected with the execution of his duties as a member of those forces or that force.

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything

suffered by a member of the armed forces of the Union or a member of a police force if—

(*a*) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces or that force ; and

(*b*) the Government certifies as mentioned in the preceding sub-section ;

nor shall any act of an employee of the Government subject him to liability in tort for death or personal injury in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Union or by a member of a police force, being a thing as to which the conditions aforesaid are satisfied.

(3) The Government or an officer authorised by the Government in this behalf, if satisfied that it is the fact—

(*a*) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Union or as a member of a police force ; or

(*b*) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was, or was not or were or were not used for the purposes of those forces or that force,

may issue a certificate certifying that to be the fact ; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which is certified.

(4) In this section, the word "Government" means,–

(*a*) in relation to a member of the armed forces of the Union or of a police force maintained by the Central Government, the Central Government ;

(*b*) in relation to a police force maintained by a State Government, the State Government.

11. Savings.—Nothing contained in this Act shall render the Government liable in respect of—

(*a*) any act of State ;

(*b*) any act done by the Government in the discharge of its functions in relation to any of the matters enumerated in entries 10, 11, 12, 13, 14, 15 and 16 of List I in the Seventh Schedule to the Constitution ;

(*c*) any act done by the President of India in the exercise and performance of the powers and duties of his office in relation to the summoning and prorogation of the Houses of Parliament, the dissolution of the House of the People, the assent to, or the withholding of assent from, any Bill, the return of any Bill to the Houses for reconsideration of the Bill or any specified provisions thereof or the issue of any Proclamation under the Constitution ;

(*d*) any act done by the Governor of a State in the exercise and performance of the powers and duties of his office in relation to the summoning and prorogation of the House or Houses of the Legislature of the State, the dissolution of the Legislative Assembly, the assent to, or the withholding of assent from, any Bill, the reservation of any Bill for the consideration of the President or the return of any Bill to the House or Houses for reconsideration of the Bill or any specified provisions thereof ;

(*e*) any act done under a Proclamation issued under the Constitution ;

(*f*) any act authorised by or under the Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947 (16 of 1947) ;

(*g*) any act done in the exercise of the powers vested in the Union for the purpose of training, or maintaining the efficiency of, the armed forces ;

(*h*) any act done by a member of the armed forces of the Union while on active service ;

(*i*) any act done by—

(*i*) a member of a police force, or

(*ii*) a public servant whose duty it is to preserve peace and order in any area or place or who is engaged on guard, sentry, patrol, watch and ward, or other similar duty in relation to any area or place,

for the prevention or suppression of a breach of the peace, or a disturbance of the public tranquillity, or a riot, or an affray or for the prevention of any offences against public property ;

(*j*) any act done or ordered to be done by a judge, magistrate, or any other person while discharging or purporting to discharge any responsibilities of a judical nature vested in him ;

(*k*) any act in connection with the execution of lawful warrants or orders of a judge, magistrate, or any other person discharging or purporting to discharge any responsibilities of a judicial nature vested in him, done by any person bound to execute the warrants or orders ;

(*l*) any act for which immunity is granted under the Indian Telegraph Act, 1885 (13 of 1885), the Indian Post Office Act, 1898 (6 of 1898), or under any other enactment for the time being in force ;

(*m*) any act in respect of which a remedy is provided under the Indian Railways Act, 1890 (9 of 1890), or under any other enactment for the time being in force ;

(*n*) any personal injury or any damage to property caused by an act which by its nature is likely in the ordinary course of events to cause such injury or damage, if the doing of the act is authorised by any enactment for the time being in force ;

(*o*) any claim arising out of defamation, malicious prosecution or malicious arrest ;

(*p*) any claim arising out of the operation of any quarantine law ;

(*q*) any claim arising in a foreign country.

12. Pending proceedings.—The provisions of this Act shall not affect any proceedings by or against the Government which have been instituted before the commencement of this Act, and such proceedings shall be disposed of as if this Act had not been passed.

13. Amendment of Act 13 of 1855.—In the Fatal Accidents Act, 1855, in section 4, for the words 'the word "person" shall apply to bodies politic and corporate', the following shall be substituted, namely :—

'the word "person" shall apply to bodies politic and corporate and the Government'.

STATEMENT OF OBJECTS AND REASONS

The law relating to the liability of the Government for torts or civil wrongs is in a state of uncertainty. This uncertainty has been occasioned by conflicting judicial decisions. In view of this uncertainty, the matter was referred, on the initiative of the late President of India, Dr. Rajendra Prasad, to the Law Commission for consideration and report. The Law Commission examined the matter in detail and after having made a general survey of the law with respect to liability of the Government in tort in various countries such as the United Kingdom, United States of America, Canada, Australia, France, etc., recommended that legislation should be undertaken in India for defining the liability of the Government in tort and formulated for this purpose certain specific proposals based mainly on the U. K. Crown Proceedings Act, 1947. While these proposals were under the active consideration of the Government, the question of the extent of liability of the Government in tort came up for consideration before the Supreme Court in State of Rajasthan *v.* Mst.

Vidyawathi—1962, Supp. 2 S.C.R. 987. In that case it was held by the Supreme Court that in India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and that the Common Law immunity never operated in India. But, in a more recent case—Ralia Ram *v.* the State of Uttar Pradesh, 1965, 1 S.C.A. 809, the Supreme Court has held that the distinction between sovereign and non-sovereign functions of the Government even now obtains in India and that,therefore, the State is liable for tortious acts committed by its employees only if such acts are committed in the discharge of functions which are not sovereign. The Court, however, was not satisfied with this state of law and urged that the matter should be set right without delay by legislation, as has been done in the United Kingdom by the Crown Proceedings Act, 1947. The proposed legislation which seeks to implement, subject to some modifications, the recommendations of the Law Commission in its Report on the liability of the State in tort, is intended to give effect to the suggestion of the Supreme Court.

2. The recommendations of the Law Commission, as given effect to in the Bill, may be categorised as follows:-

(i) In the first place, there is the liability of the Government to third parties for torts committed by its employees and agents. Here, the Government, like any private individual, should be vicariously liable to third parties for torts committed by its employees and agents in the course of their employment or for torts committed by its employees and agents on behalf of the Government and subsequently ratified by the Government. This Recommendation has been embodied in clause 3(*a*) of the Bill.

(ii) In the second place, there is the liability of the Government to third parties for torts committed by an independent contractor employed by the Government and his servants and workers. Here, the Government, like any private individual, should be liable to third parties only in cases specified in clause 3(*b*) of the Bill.

(iii) In the third place, there are Common Law duties attaching to ownership, occupation, possession or

control of property. Here also, the Government, like any private individual, should have certain duties when it is the owner of any immovable property or in possession or occupation of, or exercises control over, any immovable property. Clause 4 of the Bill gives effect to this recommendation.

(iv) In the fourth place, there is the liability of the Government in tort in respect of escape of dangerous things. Here also, the Government, like any private individual, should be liable in respect of any personal injury or any damage to property caused by any dangerous thing in the possession of the Government or over which the Government exercises control. Clause 5 of the Bill gives effect to this recommendation.

(v) In the fifth place, there is the liability of the Government towards its own employees and agents. Here also, the Government, like any private individual, should be liable to its own employees and agents for any injury caused by the failure of the Government to take the requisite care. Clause 6 of the Bill gives effect to this recommendation.

(vi) In the sixth place, the other recommendations of the Law Commission which are of an incidental, ancillary or minor nature have been incorporated in clauses 7, 8 and 9 of the Bill.

(vii) Clause 10 of the Bill makes certain special provisions as to armed forces of the Union and police forces and clause 11 provides for a number of savings and exceptions.

3. The Notes on clauses explain in greater detail the various provisions of the Bill and also indicate the deviations made from the recommendations of the Law Commission and the reasons for the deviations. The Notes also make reference to relevant provisions of the U. K. Crown Proceedings Act and important cases on the subject.

A.K. SEN.

NEW DELHI ;

The 12*th August*, 1965.